

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**James Acela,**  
Petitioner-Appellant,

**v.**

**Polk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 09-77-1390**  
**Parcel No. 090/08327-000-000**

On September 17, 2010, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant requested the appeal be considered without hearing and submitted evidence in support of the appeal. The appeal was filed by James Acela acting for the property owner Deloris M. Acela. The Board of Review designated Polk County Assistant Attorneys, Ralph Marasco, Jr. and David Hibbard as its legal representatives. It submitted evidence and also certified its record. The Appeal Board now having examined the entire record, and being fully advised, finds.

***Findings of Fact***

Deloris M. Acela is the owner of the property located at 5708 Winona Avenue, Des Moines, Iowa. James Acela acting as her agent appeals from the Polk County Board of Review decision reassessing the property. The parcel consists of a one-and-one-half story dwelling on a 0.833 acre lot. The real estate was classified as residential for the January 1, 2009, assessment and valued at \$107,600; representing \$28,700 in land value and \$78,900 in improvement value. Acela protested to the Board of Review on the ground that the property is not assessable, is exempt from taxes, or is misclassified under Iowa Code section 441.37(1)(c) and stated on the protest form, "please read letter." Although Acela protested to the Board of Review on the ground the property is exempt or

misclassified, the letter indicates Acela believes the property is assessed for more than authorized by law. In response to the protest, the Board of Review notified Acela the January 1, 2009, assessment would not be changed stating, "The assessed value of this property was not changed because no clerical or listing error was found in the amount."

Acela then filed an appeal with this Board but did not mark a ground of protest on the form. Acela, however, requested this Board read the letter he sent to the Board of Review and requested the taxes (assessment) be lowered by 10%. Acela seeks \$10,760 in relief and values the property at \$96,840. Essentially, Acela's letter makes a claim regarding the property's market value.

Acela submitted a letter dated April 30, 2009, to the Board of Review which described the City of Des Moines intentionally pumped raw, untreated sewage into the property's backyard. He states the subject property had raw sewage come up from the drain in the basement and up to five feet of raw sewage in the backyard. He claims the City did come out to pump the sewage from the yard to an area across the street which kept the sewage from going into the first floor of the dwelling. The City then dumped lime in the yard after the sewage was removed. This, in Acela's opinion, created a dangerous atmosphere and decreased the value of the yard. Acela is reluctant to mow the yard. Acela also provided photographs to the Board of Review and this Board showing the sewage issue's impact on the subject property.

The Board of Review produced its web card, which has the history of the assessment for the subject property. The original assessment of the subject property for January 1, 2007, was \$125,800. The Board of Review reduced the property to \$119,600 to reflect the sewage problem that had occurred in 1998 and 2007. Acela then filed an appeal with this Board in 2007 stating the same sewage and pump station issues. This Board reduced the January 1, 2007, assessment even further than the Board of Review to reflect Acela's concerns regarding the property to \$107,600. The web card accurately reflects the history of the assessment, and the adjustments made by the Board of

Review and this Board. The assessments for 2007, 2008, and 2009 have remained at \$107,600 set by this Board in 2007. Acela has failed to produce any evidence to indicate what the correct assessment should be. Both Boards have made adjustments to reflect the unique situation related to the subject property. We are sympathetic to the concerns, however, this is not an issue that can be solved by the Local Board or this Board.

### ***Conclusions of Law***

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code section 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).



In an appeal that alleges the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

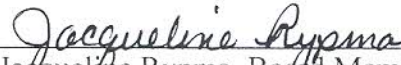
Viewing the evidence as a whole, we determine that substantial evidence is lacking to support Acela's claim of over-assessment as of January 1, 2009. Acela did not provide data to support what the assessed value should be. We, therefore, affirm the Acela property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$107,600; representing \$28,700 in land value and \$78,900 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment of the Acela property located in Des Moines, Iowa, as determined by the Polk County Board of Review is affirmed.

Dated this 18 day of October, 2010.



Richard Stradley, Presiding Officer



Jacqueline Rypma, Board Member



Karen Oberman, Board Chair

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ATTORNEYS FOR APPELLEE

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 10-18, 2010.

By:

Hand Delivered

U.S. Mail

Overnight Courier

